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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/997,599      | 11/29/2001  | John Joseph Rabasco  | 06062P USA          | 5231             |

23543 7590 05/06/2004

AIR PRODUCTS AND CHEMICALS, INC.  
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EXAMINER

SZEKELY, PETER A

ART UNIT

PAPER NUMBER

1714

DATE MAILED: 05/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/997,599

Applicant(s)

RABASCO ET AL.

Examiner

Peter Szekely

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*ed*

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Groves et al. 3,627,871, Lukhovitsky et al. 3,709,804, Nakayabashi et al. 5,879,663 or Ghosh 6,149,927.
3. Groves et al. disclose polyvinylidene chloride and other polymeric emulsions in the paragraph overlapping columns 1 and 2 and column 2, lines 4-55, hydroxyethyl cellulose and polyvinyl alcohol in column 3, lines 25-34, cetylpyridium chloride and benzalkonium chloride in the paragraph overlapping columns 3 and 4 and cetylpyridinium chloride concentration in Example 2. Lukhovitsky et al. teach protective colloids in column 1, lines 40-57, iogenic emulsifying agents in column 2, lines 59-72 and polymers in column 3, lines 6-50. Nakabayashi et al. recite polyvinyl alcohol in column 4, lines 65-66, polymers (among them polyvinyl acetate) in the paragraph overlapping columns 6 and 7 and polyhexamethylene biguanide in column 12, lines 353-36. Ghosh reveals n-alkyl dimethyl benzylammonium chloride, cetyltrimethylammonium chloride, didecyldimethylammonium chloride, dodecylguanide hydrochloride and poly(hexamethylenebiguanide) hydrochloride in column 3, lines 45-50, isothiazolines in column 4, lines 28-40, biocide concentrations in the paragraph overlapping columns 4 and 5, hydroxyethyl cellulose in Example 7, adhesives and latices in claim 9 and plasticizers and rheology modifiers in column 7, lines 25-37. It would have been

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obvious to one having ordinary skill in the art; at the time the invention was made, to select applicants' biocides from a list of equivalents. The amount of plasticizer claimed in claim 22 is conventional, thus also obvious.

### ***Response to Arguments***

4. Applicant's arguments filed 4/8/04 have been fully considered but they are not persuasive. Nakabayashi et al. present thickeners, among them polyvinyl alcohol. Thickener is a synonym for stabilizing agent, suspending agent or protective colloid. See Hawley's Condensed Chemical Dictionary, 12<sup>th</sup> Edition, page 301 (enclosed). No anionic or non-ionic surfactants are disclosed by the reference. Applicants' claims do not require the presence on any surfactants. The examiner acknowledges that one has to pick and choose among the disclosed ingredients, however picking and choosing is entirely proper in the context of an obviousness rejection. See *In re Arkley*, 455 F.2d at 587, 172 USPQ at 526. As far as Ghosh is concerned the principle of picking and choosing also applies. The reference does not disclose any anionic or non-ionic surfactants. Applicants' claims do not require the presence of any surfactants. Rheology modifiers, that is thickeners, a.k.a. protective colloids are listed in column 7, lines 29-37 and Example 5 shows the use of hydroxyethyl cellulose. The properties of the emulsions are inherent in the composition. The rejections are maintained. The rejections over Chromecek et al. Morpeth et al., Blackhouse et al. and Zhou et al. are withdrawn by the examiner in light of applicants' response.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Szekely whose telephone number is (571) 272-1124. The examiner can normally be reached on 7:00 a.m.-5:30 p.m. Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Peter Szekely  
Primary Examiner  
Art Unit 1714

P.S.  
5/4/04